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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173189
Party	Plaintiff MONSTERCOMMERCE, LLC MONSTERCOMMERCE, LLC 10715 Norton Lane , IL 62286
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Date	03/05/2007
Attachments	OPPOSITION TO MOTION TO COMPEL.PDF (57 pages)(1288809 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

<hr style="border-top: 1px solid black;"/>)	
MONSTERCOMMERCE, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91173189
)	
IGOR LOGNIKO,)	
)	
Applicant.)	
<hr style="border-top: 1px solid black;"/>)	

**MEMORANDUM OF LAW IN OPPOSITION TO
APPLICANT’S MOTION TO COMPEL AND CROSS-MOTION
FOR ENTRY OF OPPOSER’S PROPOSED PROTECTIVE ORDER**

Opposer, MonsterCommerce, LLC (“MonsterCommerce” or “Opposer”), submits this memorandum of law in opposition to Applicant, Igor Lognikov’s¹ (“Applicant” or “Lognikov”) Motion to Compel and in support of MonsterCommerce’s motion for entry of Opposer’s proposed protective order.

PRELIMINARY STATEMENT

Applicant’s blatant disregard of the rules governing motions to compel and the applicable scope of discovery compels the denial of the instant motion. First, Applicant’s motion to compel is premature and procedurally improper because Applicant never made a good faith effort to

¹ Applicant has filed a motion to amend the Application to reflect that the correct name of the applicant is Igor Lognikov and that the error in the Application is a spelling error. Accordingly, Opposer refers to Applicant herein as “Lognikov.”

resolve the issues raised in its motion, never certified that it made a good faith effort and, to this day, still has not provided either MonsterCommerce or the Board with a list of the discovery requests at issue or a list of the documents that have not been produced, all of which are required by Trademark Rule 2.120(e). Second, the motion is substantively bereft because MonsterCommerce's tailored responses and objections to Applicant's irrelevant, overly broad and improper discovery requests are well grounded and expressly permitted by TBMP 414. Finally, Applicant's request to strike MonsterCommerce's opposition is groundless and only demonstrates that Applicant is not interested in obtaining discovery. What Applicant seeks is a magical judgment in its favor, which it cannot achieve on the merits and to which it is indisputably not entitled.

FACTUAL BACKGROUND

Applicant is seeking to register the mark TEMPLATEMONSTER for software for developing websites using pre-formatted templates and for website design services. MonsterCommerce is the owner of a federal registration for the mark MONSTERCOMMERCE for, *inter alia*, software enabling users to build an e-commerce website. MonsterCommerce is also the owner of a family of MONSTER marks for its e-commerce services, including e-commerce design software and systems, website design, promotion and hosting, merchant accounts, and domain name services. MonsterCommerce instituted this Opposition on the ground that the mark TEMPLATEMONSTER is likely to cause confusion with the MONSTERCOMMERCE mark and Opposer's family of MONSTER marks. MonsterCommerce recently filed a Second Motion to Amend Notice of Opposition to oppose the Application on the grounds that Applicant is not the owner of the mark, Applicant committed fraud on the Patent and Trademark Office, and an amendment of the mark should be required, along with a disclaimer of the term "template," because the mark is not being used as depicted in the

Application. Discovery is in the initial stages, with both parties having served document and interrogatory requests. The discovery deadline is June 15, 2007.

STATEMENT OF FACTS

A. Applicant Never Made a Good Faith Effort to Resolve the Issues Presented in its Motion

Applicant served his document and interrogatory requests by first class mail on December 20, 2006. MonsterCommerce timely served its responses thirty-five days later on Wednesday, January 24, 2007. On Monday, January 29, 2007, Applicant's counsel, Richard Ross, Esquire ("Mr. Ross"), left a voice mail for MonsterCommerce's counsel, Hara K. Jacobs, Esquire ("Ms. Jacobs"). Mr. Ross stated that he wanted to discuss MonsterCommerce's discovery responses and threatened to file a motion to compel. (Declaration of Hara K. Jacobs, Esq. ("Jacobs decl.") at ¶ 2, Exh. A.) This was Mr. Ross' very first communication with Ms. Jacobs.

The next day, Ms. Jacobs faxed a letter to Mr. Ross informing him that she had received his voice mail and requested that Mr. Ross write her a letter outlining the alleged discovery deficiencies so that the parties could have a meaningful conversation about the issues. (Letter from Hara K. Jacobs, Esq. to Richard Ross, Esq. dated January 30, 2007, Exh. B.) On January 31, 2007, Mr. Ross sent Ms. Jacobs an email listing ten alleged "general" deficiencies with MonsterCommerce's discovery responses but did not identify the specific discovery responses at issue and did not explain the basis for Applicant's position.² (Email from Richard Ross, Esq. to

² Applicant clarified one document request in response to MonsterCommerce's objection (Request No. 21), and attempted to identify that request by number, however, Applicant incorrectly identified the request. (See Item No. 9, Exh. C.)

Hara K. Jacobs, Esq. dated January 31, 2007, Exh. C.) Applicant again threatened to file a motion to compel. (Id.)

On February 1, 2007, Ms. Jacobs faxed Mr. Ross a detailed letter responding to the alleged deficiencies set forth in Mr. Ross' email. (Letter from Hara K. Jacobs, Esq. to Richard Ross, Esq. dated February 2, 2007, Exh. D.) MonsterCommerce represented that, the following week, it would produce its non-confidential documents, forward a protective order for Applicant's review and that it would shortly provide the verification for its interrogatory responses. (Id. at p.1.) MonsterCommerce further represented that it would produce its privilege log once the parties reached an agreement on the scope of certain of Applicant's requests, which MonsterCommerce had objected to as overbroad and impermissible under Trademark Trial and Appeal Board practice. (Id. at p. 1.) MonsterCommerce also agreed to supplement its response to one interrogatory. (Id. at p.2, Item No. 6.) As for the remaining items in Mr. Ross' email, MonsterCommerce advised Applicant that it could not respond to three of them because Applicant had not identified the specific discovery responses that it alleged were insufficient. (Id. at p. 2, Item Nos. 5, 7 and 8.) MonsterCommerce requested that Applicant identify the discovery responses by number and that Applicant explain why it believed that MonsterCommerce's responses were not sufficient. (Id.) Finally, following Applicant's clarification of Document Request No. 21, MonsterCommerce objected to the request as overly broad and improper under Board practice because the request seeks all documents relating to any legal proceedings involving MonsterCommerce's MONSTER mark. (Id. at pp. 2-3.) MonsterCommerce requested that Applicant narrow this request and invited Applicant to discuss it with MonsterCommerce. (Id.)

Applicant's counsel responded to Ms. Jacobs' detailed letter by leaving Ms. Jacobs a voice mail and sending Ms. Jacobs an email, threatening to file a motion to compel if Ms. Jacobs did not speak with Applicant's counsel by the end of the day. (Email from Richard Ross, Esq. to Hara K. Jacobs, Esq. dated February 2, 2007, Exh. E.) Ms. Jacobs returned Mr. Ross' email later that day and proposed that counsel speak the next business day, Monday, February 5th. (Email from Hara K. Jacobs, Esq. to Richard Ross, Esq. dated February 2, 2007, Exh. F.) MonsterCommerce again requested, now for the third time, that Applicant identify the discovery responses at issue, and that Applicant explain the basis for his contention that certain of MonsterCommerce's responses and objections were not well founded. (Id.) MonsterCommerce explained that the parties could not have a meaningful meet and confer without this basic information. (Id.)

Counsel for the parties spoke by telephone on February 5, 2007. Applicant's counsel steadfastly refused to identify the interrogatory and document responses at issue, claiming that he did not want to be "unduly limited by the numbers." (Jacobs decl. at ¶ 3, Exh. A.) Applicant's counsel also refused to discuss any of Applicant's discovery requests, claiming that none of them were irrelevant, overbroad, vague or improper. (Id.) With these pronouncements, Applicant's counsel declared that the parties were at an impasse. (Id.) MonsterCommerce confirmed the promises made in its February 1st letter, namely, that it would forward the verification for its interrogatories, provide Applicant with a proposed protective order and produce its non-confidential documents that week and, further, that it would subsequently supplement its response to Interrogatory No. 10 and produce a privilege log. (Id. at ¶ 4.)

As promised, MonsterCommerce forwarded to Applicant the verification for its interrogatories on February 6th, provided Applicant with a proposed protective order on February

7th, and copied and mailed its non-confidential documents³ to Applicant on February 9th. (Emails from Hara K. Jacobs, Esq. to Richard Ross, Esq, dated February 6th and 7th, Exh. G; letter from Hara K. Jacobs, Esq. to Richard Ross, Esq. dated February 9, 2007, Exh. H.) MonsterCommerce subsequently produced a privileged log and supplemented its response to Interrogatory No. 10. (Jacobs decl. at ¶ 5, Exh. A.) Applicant, nonetheless, filed its motion to compel on February 12, 2007.

B. Opposer's Proposed Protective Order Should be Entered

MonsterCommerce provided Applicant with a proposed protective order on February 7, 2007. The parties subsequently negotiated the terms of the protective order and reached agreement on all of the terms except for two. (Email from Hara Jacobs, Esq. to Richard Ross, Esq. dated February 13, 2007, Exh. I.) A copy of MonsterCommerce's proposed protective order is attached hereto as Exhibit J. The two provisions in dispute, paragraph 2 and the second paragraph of paragraph 13, are terms that are taken verbatim from the Board's standard protective order. The terms are as follows:

2) Information Not to Be Designated as Protected.

³ Applicant appears to complain that the majority of MonsterCommerce's non-confidential production consisted of printouts of its MONSTERCOMMERCE website and its other websites displaying its family of MONSTER marks. MonsterCommerce is an ecommerce business. Its website is, not surprisingly, a primary tool for advertising and promoting its services to the public. The website printouts are responsive to four of Applicant's document requests (Nos. 1, 5, 9 and 11) and are essential evidence on the issue of likelihood of confusion. Applicant neglects to mention the various other types of non-confidential documents that MonsterCommerce produced, including, for example, its efforts to police its MONSTER marks, evidence demonstrating its family of MONSTER marks, and advertising and promotional efforts apart from its website. Applicant also ignores that many of its requests seek confidential documents, which await the entry of a protective order, and that other requests are patently irrelevant or otherwise in derogation of Board practice.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating Party or non-Party witness from a third Party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating Party or non-Party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating Party or non-Party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating Party with the approval of the designating Party.

13) Acceptance of Information; Inadvertent Disclosure.

Inadvertent disclosure of information that the disclosing Party intended to maintain under the attorney-client privilege, work-product doctrine, or other privilege shall not constitute a waiver of the privilege. Any inadvertent disclosure of privileged information shall be remedied as soon as the disclosing Party learns of its error, by informing all adverse Parties, in writing, of the error. Upon such written correction, all receiving Parties shall return the original and all copies of such documents, and shall not use such information for any purpose unless otherwise ordered by the Board.

(Proposed Protective Order at ¶¶ 2, 13, Exh. J.) Applicant will not agree to the inclusion of these terms in the parties' protective order. (Email from Richard Ross, Esq. to Hara K. Jacobs, Esq. dated February 8, 2007, Exh. I.) The parties agreed to submit this dispute to the Board for a ruling. (Email from Richard Ross, Esq. to Hara K. Jacobs, Esq. dated February 20, 2007, Exh. K.)

ARGUMENT

Applicant's Motion to Compel should be denied because Applicant has not complied with Trademark Rule 2.120(e) and because MonsterCommerce's identifiable discovery responses and objections are proper. First, Applicant has not provided (nor could he) a certification that Applicant made a good faith effort to resolve the issues presented in the motion. Second, Applicant has not identified the specific discovery requests at issue (despite being asked for this information at least three times by MonsterCommerce) and has not provided a list and

brief description of the documents that he contends were not produced by MonsterCommerce. Third, to the extent that Applicant contends that identifiable discovery responses of MonsterCommerce are deficient, those responses are proper and well founded. Fourth, Applicant's request that the Board strike MonsterCommerce's Opposition and grant judgment to Applicant as a remedy for the discovery dispute manufactured by Applicant is manifestly improper because the extraordinary sanction that Applicant seeks is not available here. 37 C.F.R. § 2.210(g) (stating that sanctions are only available if a party violates an order of the Board). Finally, MonsterCommerce's cross-motion for entry of its proposed protective order should be granted because the two terms that it seeks for inclusion in the order are stated verbatim in the Board's standard protective order and there is no reason to exclude them from the protective order for this proceeding.

II. APPLICANT'S MOTION SHOULD BE DENIED BECAUSE APPLICANT HAS NOT COMPLIED WITH TRADEMARK RULE 2.120

The Board will not entertain a motion to compel that fails to satisfy the strictures of Trademark Rule 2.120(e). See TBMP ¶ 523.02. Applicant's motion, which does not contain a good faith certification and does not list and identify the documents it contends were not produced, should be denied because it indisputably fails to comply with the requirements of the Rule.

Trademark Rule 2.120(e) requires a party seeking to file a motion to compel discovery responses to make a good faith effort to resolve the discovery dispute with opposing counsel and to certify that such efforts were made. 37 C.F.R. § 2.120(e). Applicant's motion does not satisfy this requirement because nowhere in the motion does Applicant state that he made a good faith effort to resolve the discovery dispute with opposing counsel. Instead, Applicant states that "counsel for the parties communicated" and attacks MonsterCommerce by claiming that its

deficient responses “made the communication ill-fated.” (Motion to Compel at p. 1.)

Representing that the parties have “communicated” is entirely different from representing that the movant has genuinely attempted to resolve issues in good faith -- a fact amply illustrated by the facts of this proceeding. Repeatedly threatening to file a motion to compel if opposing counsel does not immediately respond to unspecified and unsubstantiated complaints about discovery responses and objections is a form of communication. It is not a good faith effort to resolve differences about discovery. Applicant’s claim that the parties communicated is not a substitute for the good faith certification required by Rule 2.120(e) and, accordingly, Applicant’s motion should be denied.

Moreover, Applicant could not certify that it attempted in good faith to resolve the issues presented in its motion because, at every turn, Applicant refused to identify the specific discovery requests at issue, refused to state the basis for its contention that certain unspecified discovery responses and objections of MonsterCommerce were improper, and refused to discuss the scope of any of its interrogatory or document requests. Incredibly, in presenting its motion to the Board, Applicant refused to delineate, even for the Board, the specific interrogatory and document requests that are the subject of its motion, instead making broad statements of general deficiency. (Motion to Compel at p. 2.)

Applicant, by providing examples of deficiencies through this motion, is not conceding that other responses to interrogatories or requests for production are not also deficient. The examples provided simply show the respective categories of deficiency and rules violation.

(Motion to Compel at p. 2, n.1.) The Board has consistently held that it will not intervene in discovery disputes unless the parties have narrowed the disputed discovery requests to a reasonable number. Sentrol, Inc. v. Sentex Systems, Inc., 231 U.S.P.Q. 666, 667 (TTAB 1986).

Here, Applicant has not narrowed the disputed requests at all, let alone narrowed them to a reasonable number. Nor has Applicant provided a list and brief description of the documents that it contends have not been produced, which is mandated by Trademark Rule 2.120(e). Applicant should be required to specify the requests at issue, state the basis for its contention that MonsterCommerce's responses and objections to those requests are improper, and attempt to resolve these issues with MonsterCommerce's counsel in good faith. Thereafter, if the parties are unable to resolve their differences concerning the specific discovery requests, Applicant can move forward with a motion to compel. At this juncture, however, Applicant's motion is premature, procedurally improper and should be denied for these reasons.

Likewise, Applicant's request for the draconian sanction of striking the Notice of Opposition and entering judgment in favor of Applicant for purported discovery deficiencies that Applicant has not even delineated for the Board is patently improper. Trademark Rule 2.120(g) provides that sanctions for discovery violations are only available if a party fails to comply with an order of the Board. Because there has been no Board order in this proceeding concerning discovery, Applicant cannot request any form of sanction. Applicant's request for the ultimate sanction at this juncture is yet a further example of Applicant's refusal to adhere to the rules of practice governing Board proceedings.

III. MONSTERCOMMERCE'S RESPONSES AND OBJECTIONS TO THE IDENTIFIABLE DISCOVERY REQUESTS ARE PROPER

Because Applicant has not identified the discovery requests at issue and has not provided a list and brief description of the documents that it contends have not been produced, it is difficult for MonsterCommerce to respond to Applicant's claims of alleged discovery deficiencies. MonsterCommerce, however, will respond to Applicant's contentions numbered 1 through 8 as best as it can under the circumstances.

Applicant's contentions 1 and 2 concern the procedure, not the substance, of MonsterCommerce's objections and production of documents. Applicant contends that MonsterCommerce's "General Objections" are improper and that MonsterCommerce did not label its documents to identify the specific requests to which the documents are responsive. The assertion of General Objections is standard federal practice and well within the scope of Federal Rules of Civil Procedure 33 and 34. Notably, Applicant does not cite a single authority for the proposition that a party is precluded from asserting General Objections in response to discovery requests. MonsterCommerce's General Objections are proper and Applicant's motion on this point is frivolous. As for the labeling of MonsterCommerce's production, Applicant never raised this ministerial issue with MonsterCommerce prior to filing its motion. MonsterCommerce will identify the individual document requests to which its non-confidential production is responsive, although given the nature of the documents produced, the answer is self-evident.

Applicant's contention 3 states that MonsterCommerce refused to produce confidential documents absent a protective order and acknowledges that MonsterCommerce forwarded a protective order to Applicant for his review before he filed the instant motion. As set forth infra at pp. 14-15, the parties have agreed to all of the terms of the protective order, except for two provisions taken from the Board's standard order, which Applicant refuses to include in the parties' order. (Email from Hara Jacobs, Esq. to Richard Ross, Esq. dated February 13, 2007, Exh. I.) This issue will be moot following a ruling on MonsterCommerce's cross-motion for entry of its proposed protective order. Thus, there is no discovery dispute about the production of MonsterCommerce's confidential documents for the Board to consider.

Applicant's contention 4 asserts that MonsterCommerce has not produced a privilege log. Applicant's contention 7 asserts that Opposer has not supplemented its response to Interrogatory

No. 10. These contentions are moot because MonsterCommerce has produced a privilege log and supplemented its interrogatory response as promised during the parties' telephone conference on February 5, 2007. (Jacobs decl at ¶ 5, Exh. A.)

Applicant's contention 5 alleges that its discovery requests seeking information concerning MonsterCommerce's prior knowledge of Applicant are relevant to unidentified affirmative defenses raised by Applicant. Notably, Applicant does not explain in the motion how or why such information is relevant or even identify for the Board the specific affirmative defenses at issue. For this reason alone, the motion should be denied. MonsterCommerce assumes that Applicant is referring to its affirmative defenses of laches, equitable estoppel and legal estoppel. These affirmative defenses cannot form the basis of discovery requests because, as set forth in MonsterCommerce's motion for partial judgment on the pleadings filed on January 31, 2007, they are legally insufficient and should be dismissed. Specifically, Applicant cannot raise the defenses of laches and equitable estoppel in this proceeding because MonsterCommerce promptly opposed the registration of Applicant's mark. See Callaway Vineyard & Winery v. Endsley Capital Group, Inc., 63 U.S.P.Q.2d 1919, 1923 (TTAB 2002). Moreover, MonsterCommerce's knowledge of Applicant prior to the publication of the mark for opposition is irrelevant to these defenses, thus there is no basis for Applicant to seek discovery on this point. See National Cable Television Assn, Inc. v. American Cinema Editors, Inc., 937 F.2d 1572, 19 U.S.P.Q.2d 1424, 1431-32 (Fed. Cir. 1991). Finally, Applicant cannot raise the defense of legal estoppel because it is an obscure patent law doctrine that does not exist in TTAB proceedings, is not recognized by the Board, and could not apply here because the doctrine only implies a license to *use* intellectual property, not to *register* it.

Applicant's contention 6 purports to attack various discovery responses in which MonsterCommerce objected to the relevance and breadth of Applicant's improper requests but, notwithstanding those objections, agreed to provide responsive documents and information tailored to the issues in this case. Again, Applicant does not explain why its requests are proper as drafted or why MonsterCommerce's offer to produce more limited documents is not sufficient under the circumstances, which is reason alone to deny the motion. The requests at issue are, in fact, irrelevant, overly broad and improper. By way of example, Document Request No. 12 seeks, "All documents relating or referring to the dollar value of Opposer's actual and projected sales of products or services under the alleged MONSTER family of marks including the MONSTERCOMMERCE mark" This request is patently overbroad and improper because it seeks virtually every financial document in MonsterCommerce's possession since the inception of the business and seeks irrelevant information about future sales. Consistent with TBMP § 414(18), MonsterCommerce agreed to produce documents showing its annual sales of products and services under the MONSTER family of marks for the past five years upon the entry of a protective order. MonsterCommerce's objection to this request and agreement to provide appropriate summary sales information is proper under Board practice. MonsterCommerce submits that its objections to and agreement to provide more focused information than requested in response to other overly broad, irrelevant and improper discovery requests propounded by Applicant are similarly well founded and entirely consistent with TBMP § 414(2).

Applicant's contention 8 concerns Document Request No. 21, which seeks "All documents pertaining to the alleged MONSTER family of marks including the MONSTERCOMMERCE mark where Opposer disputed the right of another to use Opposer's

marks, including documents describing the outcome of any such disputes.” Following Applicant’s clarification of this request in his counsel’s January 31st email, MonsterCommerce explained that because the request appeared to encompass all documents pertaining to legal proceedings involving the MONSTER marks and all documents pertaining to the outcome of those proceedings, the request was overly broad and improper. (Letter from Hara K. Jacobs to Richard Ross, Esq. dated February 1, 2007, Exh. D.) MonsterCommerce invited Applicant to narrow the request but Applicant refused. (Id.) Document Request No. 21 is overly broad and improper under Board practice. TBMP § 414(10) (stating that the only information which must be provided with respect to a legal proceeding is the name of the parties, the jurisdiction, the proceeding number, the outcome and a copy of the decision if published). Accordingly, MonsterCommerce’s objection is well founded and it is not required to produce documents responsive to this request as presently drafted.⁴

Importantly, MonsterCommerce has produced non-confidential and non-privileged documents concerning its efforts to police the MONSTERCOMMERCE mark and its family of MONSTER marks in response to Document Request No. 20. These documents are also responsive to Request No. 21. Applicant did not inform the Board of MonsterCommerce’s production of these documents, demonstrating the necessity for the movant to provide a list of the documents that it contends have not been produced.

⁴ In response to Document Request No. 20, MonsterCommerce produced non-confidential and non-privileged documents concerning its efforts to police the MONSTERCOMMERCE mark and its family of MONSTER marks. These documents are also responsive to Request No. 21. Applicant did not inform the Board of MonsterCommerce’s production of these documents, demonstrating the necessity for the movant to provide a list of the documents that it contends have not been produced.

**IV. MONSTERCOMMERCE'S CROSS-MOTION FOR ENTRY
OF ITS PROPOSED PROTECTIVE ORDER SHOULD BE GRANTED**

MonsterCommerce seeks an order entering its proposed protective order, which is attached hereto as Exhibit J. The parties have agreed to all the terms of the proposed protective order, except for paragraph 2, specifying information that cannot be designated as "confidential" and paragraph 13, second paragraph, providing that an inadvertent disclosure of privileged information does not constitute a waiver of the privilege. (Email from Hara Jacobs, Esq. to Richard Ross, Esq. dated February 13, 2007, Exh. I.) Both of these terms appear verbatim in the Board's standard protective order. Applicant will not agree to the inclusion of these customary terms in the parties' protective order but has provided no basis for its position. (Id.)

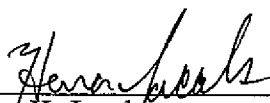
MonsterCommerce submits that these standard terms should be included in the parties' protective order because paragraph 2 protects against the over-designation of confidential information and because paragraph 13 confirms that the inadvertent disclosure of privileged information is not a waiver, consistent with the Federal Rules. There is no reason why these provisions, which appear in practically all protective orders, should be excluded from the order governing confidential information produced in this proceeding. MonsterCommerce respectfully requests that the Board enter MonsterCommerce's proposed protective order so that the parties can move forward with their respective productions of confidential documents.

CONCLUSION

For all the foregoing reasons, MonsterCommerce respectfully requests that the Board deny Applicant's Motion to Compel and grant MonsterCommerce's Cross-Motion for Entry of its Proposed Protective Order.

Respectfully submitted,

Date: March 5, 2007

By: 

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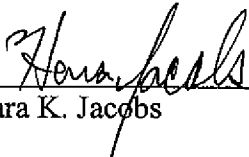
ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I, Hara K. Jacobs, hereby certify that on today's date, I caused a copy of the foregoing Opposer's Memorandum of Law in Opposition to Applicant's Motion to Compel and Cross-Motion for Entry of Opposer's Proposed Protective Order to be served by United States First Class mail, postage prepaid, on counsel for Applicant as set forth below:

Richard S. Ross, Esq.
Attorney for Applicant
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Tel (954) 252-9110
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Dated: March 5, 2007



Hara K. Jacobs

EXHIBIT “A”

TEMPLATEMONSTER

Applicant.

Opposition No. 91173189

DECLARATION OF HARA K. JACOBS

1. I am a partner in the law firm of Ballard Spahr Andrews & Ingersoll, LLP, counsel for Opposer, MonsterCommerce, LLC (“MonsterCommerce” or Opposer”) in the above-referenced proceeding. I submit this Declaration in support of MonsterCommerce’s opposition to Applicant’s Motion to Compel and Cross-Motion for Entry of Opposer’s Proposed Protective Order.

2. On January 29, 2007, I received a voicemail from Richard Ross, Esq. (“Mr. Ross”), counsel for Applicant, Igor Lognikov. Mr. Ross stated that he wanted to discuss MonsterCommerce’s discovery responses and threatened to file a motion compel. Prior to this voicemail, I had never communicated with Mr. Ross.

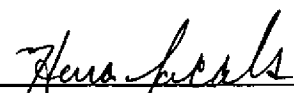
3. After exchanging written correspondence with Mr. Ross about MonsterCommerce's discovery responses and repeatedly requesting that Applicant identify the discovery responses at issue, I spoke with Mr. Ross by telephone on February 5, 2007. Mr. Ross refused to identify the interrogatory and document responses at issue, claiming that he did not want to be "unduly limited by the numbers." He also refused to discuss any of Applicant's discovery requests, claiming that none of them were irrelevant, overbroad, vague or improper. Mr. Ross then declared that the parties were at an impasse.

4. During the February 5th telephone call with Mr. Ross, I confirmed the promises made in my February 1st letter, namely, that MonsterCommerce would forward the verification for its interrogatories, provide Applicant with a proposed protective order and produce its non-confidential documents that week and, further, that it would subsequently supplement its response to Interrogatory No. 10 and produce a privilege log.

5. In accordance with the representations in my February 1st letter and February 5th telephone call, MonsterCommerce forwarded to Applicant the verification for its interrogatory responses on February 6th, provided Applicant with a proposed protective order on February 7th, mailed its non-confidential documents to Applicant on February 9th, produced its privilege log on February 28th and supplemented its response to Interrogatory No. 10 on March 5th.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Philadelphia, Pennsylvania
March 5, 2007



Hara K. Jacobs

EXHIBIT “B”

LAW OFFICES
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January 30, 2007

By Facsimile (954) 252-9192

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Re: MONSTERCOMMERCE, LLC v. Igor Logniko
Opposition No. 91173189

Dear Mr. Ross:

I received your voice mail stating that you would like to discuss certain alleged deficiencies in the discovery responses that Opposer, MonsterCommerce LLC, served on Applicant, Igor Logniko, last week. As I have not received a letter or other written correspondence from you outlining any alleged deficiencies, I could not have a meaningful conversation with you on that topic. Accordingly, kindly send a letter or an email to me outlining the alleged deficiencies that you would like to discuss and I will get back to you promptly.

Very truly yours,



Hara K. Jacobs

HKJ/tp

cc: Tricia M. Thompkins, Esquire

EXHIBIT “C”

Jacobs, Hara K. (Phila)

From: Richard Ross [prodp@ix.netcom.com]
Sent: Wednesday, January 31, 2007 10:08 AM
To: Jacobs, Hara K. (Phila)
Subject: LOGNIKOV ADV MONSTERCOMMERCE

Ms. Jacobs:

We are responding to your request dated January 30, 2007 for a written outline delineating the deficiencies contained in your client's responses to the Applicant's interrogatories and requests for production. Though this not required under Rule 37, we are complying with your request, without prejudice. Further, the deficiencies are so pervasive as to suggest bad faith in connection with the responses. To due the massive disregard of the rules of procedure, we will set forth the following, but will not be limited to the below matters and encourage you to return either of our two telephone calls that we have made to you this week to attempt to resolve this matter before we file a motion to compel/for sanctions before the TTAB.

In general, the deficiencies are as follows:

1. You make "general objections," but general objections are not authorized by the rules;
2. You state that you "will produce" documents, but the rules require you to have produced them by the deadline for production, which deadline has now passed. Your statement allows the Opposer to produce responsive documents anytime it chooses in the future, which is not authorized by the rules;
3. You claim confidential matters, yet you have not, in good faith, submitted a proposed stipulated protective order. We are happy to provide you with a proposal;
4. You claim attorney client privilege throughout, but have failed, under the rules, to provide a privilege log;
5. You assert that the Opposer's prior knowledge of the Applicant is irrelevant, but it goes to the several of affirmative defenses pled;
6. You claim general actual confusion, but do not provide specifics in terms of names or documents in support sufficient for us to prepare and take deposition discovery;
7. You arbitrarily restrict some responses to five years;
8. You arbitrarily restrict some responses those which you contend are "sufficient to show";
9. You claim that "disputed" is vague (Interr. No. 21). "Disputed" means where Opposer contests the right of another to use a mark or marks that Opposer contends it owns;
10. The interrogatories were not returned under oath.

We look forward to your return telephone call to discuss the deficiencies. If we have not heard from you by the end of the week, we will so represent that fact in our certification contained in the motion.

Sincerely,
RICHARD S. ROSS, ESQ.
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, Florida 33328
tel 954/252-9110
fax 954/252-9192

2/4/2007

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To the extent that this e-mail communication and the attachment(s) hereto, if any, may contain written advice concerning or relating to a Federal (U.S.) tax issue, United States Treasury Department Regulations (Circular 230) require that we (and we do hereby) advise and disclose to you that, unless we expressly state otherwise in writing, such tax advice is not written or intended to be used, and cannot be used by you (the addressee), or other person(s), for purposes of (1) avoiding penalties imposed under the United States Internal Revenue Code or (2) promoting, marketing or recommending to any other person(s) the (or any of the) transaction(s) or matter(s) addressed, discussed or referenced herein for IRS audit, tax dispute or other purposes.

EXHIBIT “D”

LAW OFFICES
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SALT LAKE CITY, UT
VOORHEES, NJ
WASHINGTON, DC
WILMINGTON, DE

HARA K. JACOBS
DIRECT DIAL: (215) 864-8209
PERSONAL FAX: (215) 864-9504
E-MAIL: JACOBSH@BALLARDSPAHR.COM

February 2, 2007

By Facsimile

Richard W. Ross, Esquire
4801 South University Drive
Suite 237
Ft. Lauderdale, FL 33328

Re: **MONSTERCOMMERCE, LLC v. Igor Logniko**
Opposition No. 91173189

Dear Mr. Ross:

I am writing in response to your email dated January 31, 2007, in which you outline purported deficiencies with the discovery responses served by MonsterCommerce LLC ("MonsterCommerce") last week and levy spurious allegations of bad faith against MonsterCommerce based on, what are, palpably appropriate discovery responses. I do not understand why you have adopted such a decidedly hostile tone. It serves no purpose.

Next week, MonsterCommerce expects to begin producing its non-confidential documents. Additionally, I will forward to you a suitable protective order for your review. MonsterCommerce will compile its privilege log once the parties reach agreement on the scope of certain of Applicant's requests, which are overbroad and impermissible under TTAB practice, and to which MonsterCommerce has objected. We will also shortly forward a verification to address item no. 10 on your list.

MonsterCommerce's responses to the remaining items on your list, items 5 through 9 are as follows:

- Item No. 5: You purport to allege a deficiency with MonsterCommerce's response to an unspecified discovery request(s) by stating that, "You assert that the Opposer's prior knowledge of Applicant is irrelevant, but it goes to the several

of [sic] affirmative defenses plead.” Because you have not identified the specific discovery response(s) that you believe is/are deficient or the affirmative defenses that you claim form the basis for the request(s), it is impossible to have a meaningful meet and confer on this issue. Please identify the discovery request at issue (by number) and state your basis for why the request is relevant. We will consider your position and will get back to you promptly.

- Item No. 6: You state that MonsterCommerce has claimed general actual confusion in an unspecified discovery response but that Opposer has not provided specifics in terms of names or documents. MonsterCommerce’s interrogatory responses provide specific information about the two types of actual confusion that it has experienced and identify three individuals who provided information for the interrogatory responses. MonsterCommerce will further supplement this response to identify the person most knowledgeable about actual confusion (so that you can take the person’s deposition) and will produce any non-privileged documents responsive to the relevant discovery request.
- Item No. 7: You state that MonsterCommerce has “arbitrarily restrict[ed] some responses to five years.” You have not specified the discovery request(s) at issue and you have not provided us with the basis for your position. Please identify the discovery request(s) at issue (by number) and the basis for why five years of information is not sufficient. We will consider your position and will get back to you promptly.
- Item No. 8: You state that MonsterCommerce has “arbitrarily restrict[ed] some responses [sic] those which you contend are ‘sufficient to show.’” Again, you have not specified the discovery request(s) at issue and you have not provided us with the basis for your position. It is not MonsterCommerce’s obligation to scour its discovery responses, guess which responses you have attacked and speculate on the basis for your attack. The purpose of the meet and confer requirement is to have the parties make a good faith effort to resolve discovery issues on their own. The lack of information and specificity that you have provided to us belies that obligation. We are ready and waiting to meet and confer in good faith but need you to participate in that process. Accordingly, please identify the discovery request(s) at issue (by number) and the basis for your position so that we can get back to you.
- Item No. 9: You state that MonsterCommerce objected to the term “disputed” as vague in response to Interrogatory No. 21 and you have clarified the information that you are seeking by defining what you meant by the word “disputed.” Thank you for the clarification. We note that there is no Interrogatory No. 21 in Applicant’s discovery requests. We assume you are referring to Document Request No. 21. With your clarification, this request appears to encompass all documents pertaining to legal proceedings involving any of the MONSTER marks

Richard W. Ross, Esquire
February 2, 2007
Page 3

and all documents pertaining to the outcome of those proceedings. Such a request is overly broad and improper. If we are misconstruing this document request or if you wish to narrow the request, please let us know and we will discuss this matter with you.

We look forward to hearing from you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Hara K. Jacobs".

Hara K. Jacobs

HKJ/tp

cc: Tricia M. Thompkins, Esquire

EXHIBIT “E”

Jacobs, Hara K. (Phila)

From: Richard Ross [prodp@ix.netcom.com]
Sent: Friday, February 02, 2007 11:42 AM
To: Jacobs, Hara K. (Phila)
Subject: LOGNIKOV ADV MC
Follow Up Flag: Follow up
Flag Status: Red

Hara,

Having just received another fax from you today, we do not believe your letter narrows issues regarding your client's deficient discovery responses. To the contrary, it raise more issues. We just called your office again, the third time this week, in an attempt to confer regarding all of the deficiencies. For whatever reason, you have had the time to write letters, but not return the phone calls.

If we do not hear from you by the end of the day today, in a good faith attempt to narrow issues, we will be left with no recourse but to take the matter to the TTAB.

Sincerely,
RICHARD S. ROSS, ESQ.
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, Florida 33328
tel 954/252-9110
fax 954/252-9192

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2/28/2007

EXHIBIT “F”

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Friday, February 02, 2007 3:01 PM
To: 'Richard Ross'
Subject: RE: LOGNIKOV ADV MC

Richard,

I just returned from an oral argument and received your telephone message and this email. I am happy to speak with you about the discovery issues raised in your email dated January 31, 2007. I cannot do it this afternoon -- I have a meeting at 3 and will not be back, but am available on Monday anytime after 3:30. Let me know a time that works for you.

As I stated in my letter, we need more information from you to have a meaningful meet and confer. At a minimum, you need to identify the specific document and interrogatories responses that you contend MonsterCommerce did not appropriately answer and the reason why you believe MonsterCommerce's objections and responses are not well founded. This is the most basic information and I am puzzled why you have refused to provide it to us. Your refusal to provide this and the other information outlined in my letter, coupled with your repeated threats to file a motion to compel (including in your very first communication to me on Monday), indicate that you have no interest in resolving any purported discovery disputes. Instead, you are inexplicably intent on filing a motion to compel with the TTAB.

Should you move forward with a discovery motion without responding to our letter, we believe the motion will be rejected because you have failed to meet and confer with us in good faith.

I look forward to speaking with you.

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com

From: Richard Ross [mailto:prodp@ix.netcom.com]
Sent: Friday, February 02, 2007 11:42 AM
To: Jacobs, Hara K. (Phila)
Subject: LOGNIKOV ADV MC

Hara,

Having just received another fax from you today, we do not believe your letter narrows issues regarding your client's deficient discovery responses. To the contrary, it raise more issues. We just called your office again, the third time this week, in an attempt to confer regarding all of the deficiencies. For whatever reason, you have had the time to write letters, but not return the phone calls.

2/28/2007

If we do not hear from you by the end of the day today, in a good faith attempt to narrow issues, we will be left with no recourse but to take the matter to the TTAB.

Sincerely,
RICHARD S. ROSS, ESQ.
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, Florida 33328
tel 954/252-9110
fax 954/252-9192

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2/28/2007

EXHIBIT “G”

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Tuesday, February 06, 2007 12:34 PM
To: 'Richard Ross'
Cc: Thompsons, Tricia M. (DC)
Subject: MonsterCommerce v. Igor Lognikov

Attachments: img082.pdf

Richard,

As we discussed, I am attaching the Verification for MonsterCommerce's interrogatory responses.

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com



img082.pdf (322
KB)

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Wednesday, February 07, 2007 3:32 PM
To: 'Richard Ross'
Subject: MonsterCommerce v. Igor Lognikov

Attachments: DMEAST-#9719306-v1-TemplateMonster_-_Protective_Order.DOC

Richard,

As we discussed, I am attaching a draft protective order. Let me know your thoughts.

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com



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-v1-TemplateMon...

EXHIBIT “H”

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HARA K. JACOBS

DIRECT DIAL: (215) 864-8209
PERSONAL FAX: (215) 864-9504
E-MAIL: JACOBSH@BALLARDSPAHR.COM

February 9, 2007

VIA OVERNIGHT MAIL

Richard W. Ross, Esquire
4801 South University Drive
Suite 237
Ft. Lauderdale, FL 33328

Re: **MONSTERCOMMERCE, LLC v. Igor Lognikov**
Opposition No. 91173189

Dear Richard:

I am enclosing Opposer's non-confidential documents for production bates-labeled MC 000001 - MC000709.

Very truly yours,



Hara K. Jacobs

HKJ/tp

cc: Tricia M. Thompson, Esquire

EXHIBIT “I”

Jacobs, Hara K. (Phila)

From: Jacobs, Hara K. (Phila)
Sent: Tuesday, February 13, 2007 6:09 PM
To: 'Richard Ross'
Subject: RE: LOGNIKOV ADV MC

Richard,

We have reviewed your comments with our client.

1. We are unwilling to delete paragraph 2 and unwilling to delete the second paragraph of paragraph 13 appearing on page 6. We note that these are standard terms in Board protective orders.
2. Your comment #2 below, do you mean to say that experts and consultants should not have access to materials marked ATTORNEYS' EYES ONLY? Please clarify.
3. Paragraph 5 - disclosure by email as you propose is fine.
4. Challenge to designation within 40 days, other terms you propose in comment #5 below are acceptable.

After hearing back from you on your comment #2 below, I will revise the protective order and send it to you.

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com

From: Richard Ross [mailto:prod@ix.netcom.com]
Sent: Thursday, February 08, 2007 1:48 PM
To: Jacobs, Hara K. (Phila)
Subject: LOGNIKOV ADV MC

Hara:

Comments to your proposed SPO:

1. Delete Para. 2;
2. On page 3, clarify that **Attorneys** alone shall have access to trade secret matter;
3. Para. 5, disclosure may be made by e mail, with opposing counsel acknowledging receipt of e mail in good faith;
4. Delete second paragraph of Para. 13 on page 6;
5. Challenge to designation to be made within 33 days; afterward, challenging party to explain why

2/25/2007

challenge late; but at all times, designating party to bear burden.

Please advise.

Sincerely,
RICHARD S. ROSS, ESQ.
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, Florida 33328
tel 954/252-9110
fax 954/252-9192

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EXHIBIT “J”

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

<hr style="border-top: 1px solid black;"/>)	
MONSTERCOMMERCE, LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91173189
)	
IGOR LOGNIKO,)	
)	
Applicant.)	
<hr style="border-top: 1px solid black;"/>)	

**PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any Party or non-Party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a Party or witness. To preserve the confidentiality of the information so disclosed, the Parties have agreed to be bound by the terms of this order. As used in this order, the term "information" covers both oral testimony and documentary material.

Agreement of the Parties is indicated by the signatures of the Parties' Attorneys and the Parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board Attorney or Administrative Trademark Judge at the conclusion of the order.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a Party or witness, on its own or through its Attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential—Material to be shielded by the Board from public access.

Highly Confidential—Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the Parties.

Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the Parties, and available for review by Attorneys for the Parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the Parties.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating Party or non-Party witness from a third Party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating Party or non-Party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating Party or non-Party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating Party with the approval of the designating Party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the Parties or their Attorneys, or by motion filed with and approved by the Board.

Judges, Attorneys, and other employees of the Board are bound to honor the Parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the Parties or their Attorneys to perform services incidental to this proceeding will be bound only to the extent that the Parties or their Attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for Parties are defined as **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.

- **Independent experts or consultants** include individuals retained by a Party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the Party or its Attorneys.
- **Non-Party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their **Attorneys** shall have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.

Attorneys shall have access to information designated as **trade secret/commercially sensitive**. **Independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the Parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5. No other individuals shall have access to information designated as **trade secret/commercially sensitive**.

Independent experts or consultants, non-Party witnesses, and any other individuals not otherwise specifically covered by the terms of this order may be afforded access to **confidential** or **highly confidential** information in accordance with the terms that follow in paragraph 4.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any Party or its Attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the Party or Attorney proposing to disclose the information has received the signed acknowledgement from the individual. A form for such acknowledgement is attached to this order. The Party or Attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any Party or Attorney proposing to share disclosed information with an independent expert or consultant must also notify the Party which designated the information as protected. Notification must be personally served, forwarded by certified mail, return receipt requested, or sent by overnight mail and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The Party or its Attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the

Parties must negotiate the issue before raising the issue before the Board. If the Parties are unable to settle their dispute, then it shall be the obligation of the Party or Attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the Parties have made to settle their dispute. The Party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding Party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing Party learns of its error, by informing all adverse Parties, in writing, of the error. The Parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a Party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring Party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding Party makes documents available for inspection and copying by the inquiring Party, all documents shall be considered protected during the course of inspection. After the inquiring Party informs the responding Party what documents are to be copied, the responding Party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing Party learns of its error, by informing all adverse Parties, in writing, of the error. The Parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering Party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested Party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the Party that took

the deposition. During that 30-day period, either Party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a Party or its Attorney files a notice of reliance during the Party's testimony period, the Party or Attorney is bound to honor designations made by the adverse Party or Attorney, or non-Party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing Party, or any adverse Party, or any non-Party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a Party or Attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page

of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a Party or its Attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information that the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

Inadvertent disclosure of information that the disclosing Party intended to maintain under the attorney-client privilege, work-product doctrine, or other privilege shall not constitute a waiver of the privilege. Any inadvertent disclosure of privileged information shall be remedied as soon as the disclosing Party learns of its error, by informing all adverse Parties, in writing, of the error. Upon such written correction, all receiving Parties shall return the original and all copies of such documents, and shall not use such information for any purpose unless otherwise ordered by the Board.

14) Challenges to Designations of Information as Protected.

If the Parties or their Attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing Party. If the Parties are unable to resolve their differences, the Party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging Party will be expected to show why it could not have made the challenge at an earlier time.

The Party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the Parties and their Attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The Parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the Parties and their Attorneys shall return to each disclosing Party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing Party or its Attorney may make a written request that such materials be destroyed rather than returned.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the Parties or their Attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following:

MONSTERCOMMERCE LLC

IGOR LOGNIKOV

By: _____

By: _____

Title: _____

Title: _____

Hara K. Jacobs, Esquire
Brian Winterfeldt, Esquire
Tricia McDermott Thompkins, Esquire
Ballard Spahr Andrews &
Ingersoll, LLP
601 13th St., N.W., Suite 1000 South
Washington, D.C. 2005

Richard S. Ross, Esquire
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, FL 33328

Date: _____

Date: _____

By Order of the Board, effective _____

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/612,360
Published in the *Official Gazette* on May 30, 2006

TEMPLATEMONSTER

MONSTERCOMMERCE, LLC,)	
)	
Opposer,)	
)	
v.)	
)	
IGOR LOGNIKO,)	
)	
Applicant.)	
)	

Opposition No. 91173189

**ACKNOWLEDGMENT OF ORDER PROTECTING CONFIDENTIALITY
OF INFORMATION REVEALED DURING BOARD PROCEEDING**

I, _____ [print name], declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition or cancellation proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[print title, if applicable]

[date]

EXHIBIT “ K ”

Jacobs, Hara K. (Phila)

From: prodp@ix.netcom.com
Sent: Tuesday, February 20, 2007 7:02 PM
To: Jacobs, Hara K. (Phila)
Subject: Re: LOGNIKOV ADV MC
Follow Up Flag: Follow up
Flag Status: Completed

We can do a Plaintiff's contention and a Defendant's contention prior to the subject paragraphs. If you don't want to do that, file your motion and we will oppose accordingly.

Jacobs, Hara K. (Phila) wrote:

Richard,

We intend to explain to the TTAB in the submission why the two paragraphs at issue should be in the order. Your proposal does not allow us to present our position. Do you have another suggestion or should MonsterCommerce move forward with a motion?

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com

From: Richard Ross [<mailto:prodp@ix.netcom.com>]
Sent: Thursday, February 15, 2007 11:14 AM
To: Jacobs, Hara K. (Phila)
Subject: Re: LOGNIKOV ADV MC

Yes,

Simply put the two paragraphs in brackets; advise the TTAB that you want them in but we do not; and jointly request a ruling.

Jacobs, Hara K. (Phila) wrote:

Richard,

Your clarification to No. 2 is fine. I am not sure how we would do this as a joint motion because I expect that each party would present arguments why its version of the protective order is appropriate. Did you have a concept in mind?

2/28/2007

Hara

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com

From: prodp@ix.netcom.com [<mailto:prodp@ix.netcom.com>]
Sent: Tuesday, February 13, 2007 6:23 PM
To: Jacobs, Hara K. (Phila)
Subject: Re: LOGNIKOV ADV MC

Please see our comments below. If you are in agreement with the changes, please advise how you want to proceed regarding the concept of a joint motion for No. 1 below.

Jacobs, Hara K. (Phila) wrote:

Richard,

We have reviewed your comments with our client.

1. We are unwilling to delete paragraph 2 and unwilling to delete the second paragraph of paragraph 13 appearing on page 6. We note that these are standard terms in Board protective orders. I SUGGEST WE SUBMIT OUR RESPECTIVE POSITIONS REGARDING THE SUBJECT PARAGRAPHS TO THE BOARD AS A JOINT MOTION, INDICATE THAT WE DISAGREE WITH THESE TWO ITEMS, AND ALLOW THE BOARD TO DECIDE
2. Your comment #2 below, do you mean to say that experts and consultants should not have access to materials marked ATTORNEYS' EYES ONLY? Please clarify. NO, OUTSIDE COUNSEL, EXPERTS AND CONSULTANTS CAN VIEW TRADE SECRET DESIGNATIONS, BUT NOT IN HOUSE COUNSEL
3. Paragraph 5 - disclosure by email as you propose is fine.
4. Challenge to designation within 40 days, other terms you propose in comment #5 below are acceptable. FINE

After hearing back from you on your comment #2 below, I will revise the protective order and send it to you.

Hara

2/28/2007

Hara K. Jacobs
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
(215) 864-8209 - phone
(215) 864-9504 - direct fax
jacobsh@ballardspahr.com

From: Richard Ross [<mailto:prodp@ix.netcom.com>]
Sent: Thursday, February 08, 2007 1:48 PM
To: Jacobs, Hara K. (Phila)
Subject: LOGNIKOV ADV MC

Hara:

Comments to your proposed SPO:

1. Delete Para. 2;
2. On page 3, clarify that **Attorneys** alone shall have access to trade secret matter;
3. Para. 5, disclosure may be made by e mail, with opposing counsel acknowledging receipt of e mail in good faith;
4. Delete second paragraph of Para. 13 on page 6;
5. Challenge to designation to be made within 33 days; afterward, challenging party to explain why challenge late; but at all times, designating party to bear burden.

Please advise.

Sincerely,
RICHARD S. ROSS, ESQ.
Atrium Centre
4801 S. University Drive
Suite 237
Ft. Lauderdale, Florida 33328
tel 954/252-9110
fax 954/252-9192

CONFIDENTIALITY NOTICE:

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NOTICE UNDER U.S. TREASURY DEPARTMENT CIRCULAR 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service:

To the extent that this e-mail communication and the attachment(s) hereto, if any, may contain written advice concerning or relating to a Federal (U.S.) tax issue, United States Treasury Department Regulations (Circular 230) require that we (and we do hereby) advise and disclose to you that, unless we expressly state otherwise in writing, such tax advice is not written or intended to be used, and cannot be used by you (the addressee), or other person(s), for purposes of (1) avoiding penalties imposed under the United States Internal Revenue Code or (2) promoting, marketing or recommending to any other person(s) the (or any of the) transaction

2/28/2007

(s) or matter(s) addressed, discussed or referenced herein for IRS audit, tax dispute or other purposes.